

#2017-26



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March 10, 2017

Re: Appeal of partial GRAMA denial case 16W007074

On January 3, 2017 Nicolle Loe, a paralegal for Jason Schatz, requested several records held by the Washington County Sheriff's Office for the above case. (See attached) Disclosure of several of the records was denied. Pursuant to U.C.A. § 63G-2-205 That denial was appealed. On February 13, 2017 Washington County Sheriff's Office denied that appeal.

Records requested

The following records were requested:

1. All initial contact reports written or recorded by the Deputy Torres or any other deputy for the above listed case.
2. Audio and video from Deputy Torres and any other deputy that responded to the scene or any other place the subject of the records was taken.
4. Audio and video from the room at Purgatory Jail in which the blood draw was administered.

Records provided

The response to this request is wholly inadequate and does not comply with the requirement for release of records as stated in the GRAMA law.

In response to the first request, we were provided with a redacted copy of **summary** of the initial contact report, a copy of the citation, and a copy of the vehicle impound form. Washington County Sheriff's Office denied the DUI report form, as well as the toxicology analysis request form. In response to the second request, we were provided with a portion of the video which was 'redacted'. The third request was denied outright. The denial of these records was a violation of the GRAMA statute.

ANALYSIS

All records are public

All records held by a governmental agency are presumed public. GRAMA states: "A record is public unless otherwise expressly provided by statute." U.C.A. § 63G-2-201(2). In other words, unless the GRAMA statute expressly provides for a record to be classified private, controlled, or protected, it is a public record.

Initial Contact Report, DUI report form, and Video

The initial contact report, the DUI report form and the video are the initial contact report as defined by GRAMA. As such these are public record and the GRAMA statute requires the Washington County Sheriff's Office release them.

GRAMA defines the initial contact report as follows:

- (a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:
 - (i) the date, time, location, and nature of the complaint, the incident, or offense;
 - (ii) names of victims;
 - (iii) the nature or general scope of the agency's initial actions taken in response to the incident;
 - (iv) the general nature of any injuries or estimate of damages sustained in the incident;
 - (v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or
 - (vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.
- (b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

U.C.A. § 63G-2-103(14).

The initial contact report is a public record. As such, redacting a public record violates the requestor's right to inspect, or obtain a copy of a public record as described in U.C.A. 63G-2-201.

Body camera video and the DUI report form are also public records. GRAMA specifically states that the initial contact report may be written or recorded. This issue of video and the DUI report form was heard by the Utah State Records Committee which concluded that video taken during an investigation and arrest and the DUI report form were part of the initial contact report and public. Chris Vanocur/ABC 4 News v. Utah Department of Public safety, 2010-05 (State Records Committee of the State of Utah,

January 12, 2010). On appeal, this decision was upheld by the district court. Utah Department of Public Safety v. State Records Committee, et al., 100904439, Utah 3rd Dist. Jun 17 2010. Redacting or excluding of any part of the video, denying access to the initial report and denying access to the DUI report form is a violation of the GRAMA statute.

U.C.A. § 63G-2-305(10)(c)

U.C.A. §63G-2-305(10)(c) does not apply to public records unless the governmental agency possessing the records shows that releasing such records “would create a danger of depriving a person of a right to a fair trial or impartial hearing.” Simply making such a claim does not make it so. The Washington County Sheriff’s Office has not even attempted to demonstrate that releasing these records would create such a danger.

This issue was also addressed by the State Records Committee and the District Court. Both determined that releasing video and/or the initial contact report would not deprive the subject of the records of a fair trial. In a highly publicized case the court stated:

The Court is not persuaded by the Department's argument that release of these Records would create a danger of depriving _____ of the right to a fair trial. The only evidence Petitioner has submitted is [the prosecutor's] declaration. As stated previously, [the prosecutor's] conclusions are not supported by either facts or analysis.

[T]here are less restrictive alternatives to denying public access to these Records to protect _____ trial rights. Specifically, the Justice Court hearing _____ criminal trial can call an enlarged venire as a way of increasing the likelihood of finding impartial jurors to hear the case. Further, that Court can conduct thorough and searching voir dire and utilize a detailed jury questionnaire in order to identify and question prospective jurors to determine their level of exposure to this material, and whether such exposure has affected the prospective juror's ability to be impartial in the case. If necessary, the could allow a change of venue for _____ if the Court were persuaded that it could not impanel an impartial jury in Salt Lake City. **Using these time-honored alternatives is consistent with the legislative intent underlying GRAMA, and is far preferable to denying access to Records involving matters of general public interest.** The Court concludes that the Department has failed to show how release of these public records will undermine _____ right to a fair trial.

Utah Department of Public Safety v. State Records Committee, et al., 100904439, Utah 3rd Dist. Jun 17 2010 (emphasis added). *See also* ACLU v. Salt Lake City Police Department et al., 2017-02, (State Records Committee of the State of Utah Jan. 24, 2017) (In which the State Records Committee found releasing the body camera video of an officer involved shooting

would not create a danger of depriving the subject of the records of the right to a fair trial) (attached).

The Washington County Sheriff's Office has claimed releasing the records would deprive the subject of the records of a fair trial, yet has offered no evidence, analysis, or fact to support such a claim. The claim is without merit.

Jail video

The Washington County Sheriff's Office denied access to a copy of the video from the jail's Intoxylizer room showing the Intoxylizer test claiming the record is protected pursuant to U.C.A. § 63G-2-305(13). This section of GRAMA states: "[R]ecords that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole."

The video requested should only the room in which the Intoxylizer machine is located, or the room in which the blood draw was performed. Video of these rooms typically show a doorway, and a portion of a hallway. Such video does not show records relating to the incarceration, treatment, probation, or parole of any person. Arrestees are commonly brought to these areas, they are not or should not be essential to the security plan. It is unreasonable for Washington County to determine that all portions of the facility would jeopardize the safety and security of the facility. Such an assertion by a custodial facility calls into question if they have appropriate security in place. If such a procedure does exist in their facility that the arrestee are taken into a security sensitive area, then it is in the public interest to know of that procedure and the possible security consequences to the facility. It is not anticipated the video recorded in either room does not show any portion of the control room, the housing units, or any other part of the jail. The floor plan, security measures, or any other details of the workings of the jail cannot be discerned from viewing the video. Again if it does, then the public interest in knowing that procedure outweighs the security concern.

As such, this section of the GRAMA statute does not apply to the video of area surrounding the Intoxylizer instrument or the room in which the blood draw was done. It too, must be released.

FEEES

Because the requested records are public, redaction is not only unnecessary but in violation of the GRAMA statute. Charges for the time taken to redact are, therefore, inappropriate.

Even if some of the requested records required redaction, charging for the time taken to redact the records is not permitted by GRAMA. The letter Ms. Loe received with an amount due of \$125.00 states the fee is according to U.C.A. § 63G-2-203(1). This section states: "A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. This fee shall be approved by the governmental entity's executive officer."

This section refers to the fee schedule that has been approved by the County Commission for records provided, e.g., police reports etc. It does not include time taken for copying, burning a diskette, or other similar activities. U.C.A. § 63G-2-203(2) allows for a government entity to charge for staff time, "When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity...." This office did not request, nor has it received records in any format other than that in which the records are maintained by the Washington County Sheriff's Office in accordance with U.C.A. §§ 63G-2-203 and 701.

Washington County cannot show that this redaction was required under GRAMA. Reviewing the videos provided, there is no reason where the individual whose face has been 'blurred' would have a reasonable expectation of privacy. The entire event occurred in a public place.

This office paid the fee in full because the records were needed immediately.

However, we expect the Washington County Sheriff's Office to reimburse Schatz Anderson the entire amount paid. When we are provided **unredacted** copies the **complete** police report, DUI report form, and all videos we will pay for those items according to Washington County Sheriff's Office's standard fee schedule.

CONCLUSION

The records provided pursuant to Ms. Loe's request are deficient and do not comply with the request or the GRAMA statute. All records requested are public records and must be provided.

RELIEF SOUGHT

We seek Washington County's compliance and the full release of all records requested by Ms. Loe pursuant to GRAMA as well as a full refund, less the actual costs of providing the records in accordance with the County's approved fee schedule.

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